SBCivil Writ Petition No.717/1996

Nathuram
vs.
State of Rajasthan & Ors.

Date of Order :: 4th April, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. B.L.Tiwari, Dy. Government Advocate.

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By an order dated 10.7.1971 agricultural land measuring 23.15 bighas was allotted to the petitioner by considering him as a landless person for temporary cultivation in chak 6P. The allotment made in favour of the petitioner for temporary cultivation was renewed upto 31.12.1972, however, the same was not extended as the land allotted to the petitioner was kept reserved for allotment to the Pong Dam Oustees.

The petitioner in view of the fact that he was already having lease for temporary cultivation again applied for allotment of land to the competent authority.

Accordingly under an order dated 1.7.1973 land was allotted to him for temporary cultivation in square No.203/39 chak 5JM. Under an order dated 16.7.1974 the same land was allotted to the petitioner for permanent cultivation.

By a notice dated 19.1.1975 issued under Section 14 of the Rajasthan Colonisation Act, 1954 the petitioner was called upon to show cause as to why the allotment of land made in his favour under the order dated 16.7.1974 be not cancelled being in breach of the terms of allotment.

The petitioner on 4.2.1975 submitted a detailed explanation to satisfy the competent authority that no breach of conditions was made by him while getting allotment of land. The authorised officer i.e. the Deputy Collector (Revenue), Raisinghnagar on 4.2.1975 itself cancelled the allotment of land made in favour of the petitioner, however, according to the petitioner no information with regard to order dated 4.2.1975 was ever given to him. It is also stated that on 4.2.1975 the Deputy Collector (Revenue), Raisinghnagar assured the petitioner to provide information of the decision as and when taken with regard to notice dated 19.1.1975. The petitioner after 4.2.1975 while retaining possession of the land in question with him also satisfied the demand made by the Tehsildar by depositing the remaining amount payable for allotment of the land in dispute. The petitioner at the first instance came to know about the order dated 4.2.1975 on 9.5.1990 when the Assistant Collector, Anupgarh made a note in allotment file of the petitioner as under:-

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पत्रावली प्रस्तुत अवलोकन किया।गया। उपरोक्त आवंटन हिकायती पत्रावली सख्या 106 दिनांक 14-1-75 निर्णय दिनांक 4-2-75 द्वारा खारिज किया जा चुका है आवंटन पत्रावली एस डी एम द्वारा रायसिहनगर द्वारा चाही जा रही है। आवंटन खरिजी का तथ्य उनके ध्यान में लाया जावे।

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सहायक कलेक्टर अनूपगढ"

According to the petitioner in pursuant to the note referred above dated 9.5.1990 the patwari of the patwar circle concerned initiated eviction proceedings against the petitioner, therefore, he immediately obtained a copy of the order dated 4.2.1975 and then preferred an appeal before the Revenue Appellate Authority challenging it. The petitioner also submitted an application under Section 5 of the Limitation Act for condonation of delay in filing the appeal. The application preferred by the petitioner under Section 5 of the Limitation Act was dismissed by order dated 9.7.1990 passed by the Revenue Appellate Authority, therefore, the appeal too stood rejected.

Being aggrieved by the same the petitioner preferred an appeal under Section 9 of the Rajasthan Land Revenue Act, 1956 before the Board of Revenue for Rajasthan, Ajmer that too came to be rejected by

judgment dated 2.2.1996. The Board of Revenue as well as the Revenue Appellate Authority did not find the reason given by the petitioner for causing delay in filing the appeal as sufficient and trustworthy.

By the instant petition for writ a challenge is given by the petitioner to the judgment dated 2.2.1996 passed by the Board of Revenue for Rajasthan, Ajmer and the judgment dated 9.7.1990 passed by the Revenue Appellate Authority, Sriganganagar.

While giving challenge to the judgments impugned it is contended by learned counsel for the petitioner that the courts below erred while not considering the reason given by the petitioner for causing delay in filing appeal as sufficient and trustworthy. The petitioner in application to Section 5 of the Limitation Act supported by an affidavit stated that the order dated 4.2.1975 was not dictated by the authorised officer i.e. the Deputy Collector (Revenue), Raisinghnagar in his presence but an assurance was given that as and when the application dated 19.1.1975 shall be decided necessary information shall be given to him. The petitioner also stated in the application that he came to know about the order dated 4.2.1975 only on making an entry in the allotment file by the Assistant Collector, Anupgarh on 9.5.1990 wherein the fact with regard to cancellation of allotment was averred.

The courts below held that there is no reason to believe the fact stated by the petitioner that the order dated 4.2.1975 was not drawn on the same day as in the order dated 4.2.1975 appearance of the petitioner is mentioned, therefore, a valid presumption about his awareness of the order could be drawn. The counsel for the respondents also defended the judgments impugned on the same counts and also by emphasising that the order passed by quasi judicial authority is required to be accepted as it is.

I have considered the contentions made by counsel for the parties.

It is true that an order passed by quasi judicial authority in normal course cannot be disbelieved. In present case also the appearance of the petitioner is shown in the order dated 4.2.1975, therefore, no doubt can be created with regard to the fact that on 4.2.1975 the petitioner was present before the Deputy Collector (Revenue), Raisinghnagar. However, the question which requires determination is that whether the order dated 4.2.1975 was passed in presence of the petitioner or not.

Certain important facts are required to be taken into consideration while determining the issue

above. It is not at all in dispute that after the order dated 4.2.1975 the authorities of the colonisation department accepted the cost of the land from the petitioner in instalments. A notice dated 26.2.1986 was also served upon the petitioner mentioning therein that in the event petitioner does not deposit the demand against irrigation facility before 26.3.1986 he shall be deprived of irrigation. The note with regard to cancellation of allotment of land was made in allotment file pertaining to the petitioner on 9.5.1990. All these facts create doubt with regard to knowledge of the order dated 4.2.1975 to the petitioner on 4.2.1975 itself. The petitioner in his application under Section 5 of the Limitation Act which was supported by an affidavit also stated that he came to know about the order dated 4.2.1975 only on 9.5.1990. In these set of facts and circumstances of the case the benefit of doubt is required to be given to the petitioner, specially in the circumstances that no action was taken by the authorities of the colonisation department to dispossess the petitioner after 4.2.1975 to 9.5.1990. The courts below looking to peculiar facts of present case should have condoned the delay in filing appeal by the petitioner giving challenge to the order dated 4.2.1975. The Revenue Appellate Authority as well as the Board of Revenue erred while rejecting the application submitted by the petitioner under Section 5 of the Limitation Act by the judgments impugned. The

judgments impugned dated 9.7.1990 and dated 2.2.1996 passed by Revenue Appellate Authority and the Board of Revenue, therefore, deserve to be quashed.

Accordingly, this petition for writ is allowed. The judgments impugned dated 9.7.1990 and dated 2.2.1996 passed by Revenue Appellate Authority and the Board of Revenue are hereby quashed. The Revenue Appellate Authority, Sriganganagar is directed to hear and decide the appeal preferred by the petitioner giving challenge to the order dated 4.2.1975 afresh in accordance with law. The matter being quite old one, it is expected from the Revenue Appellate Authority to dispose of the appeal within a period of six months from the date the petitioner submits a certified copy of this order before Revenue Appellate Authority, Sriganganagar. Till disposal of the appeal the petitioner shall not be dispossessed from the land in dispute.

(GOVIND MATHUR),J.

kkm/ps.